REMARKS

This paper addresses the non-final Office Action of February 11, 2009, in connection with the above-captioned application. Claims 1-55 are currently pending, claim 56 having been withdrawn from consideration by the Office. Claims 1-55 stand rejected. Claims 1, 2, 5, 28, 29, 54, and 55 have been amended. Claims 57-59 are added. In addition, the Specification is amended to address an informality. No new matter has been added. The amendments are supported by the original disclosure. Reconsideration of the application is respectfully requested in light of the amendments and the following remarks.

I.   Objection to the Specification

The Office Action objects to paragraph 2 of the Specification as allegedly containing an "embedded hyperlink." Accordingly, the Specification is amended, removing the characters "http://." Applicant submits that the Specification as amended, complies with the MPEP. For example, the MPEP explains that: "Examples of a hyperlink or a browser-executable code are a URL placed between these symbols "< >" and http:// followed by a URL address." MPEP § 608.01(VII). The amended Specification no longer contains any such item, but rather contains only a URL address by itself without either the "< >" characters or a preceding "http://." Accordingly, withdrawal of the objection is respectfully requested.

II.   Objections to Claims 1, 2, 28, 29, 54, and 55

The Office Action objects to claims 1, 2, 28, 29, 54, and 55 for using the abbreviated form of the term "Short Message Service." The claims are amended, incorporating the expanded form "Short Message Service." Accordingly, withdrawal of the objection is respectfully requested.

III.   Rejection of Claims 2-27, 29-48, and 55 under 35 U.S.C. § 112 ¶ 1

Claims 2-27, 29-48, and 55 stand rejected under 35 under 35 U.S.C. § 112 ¶ 1, for allegedly failing to comply with the written description requirement. Specifically, the Office Action asserts that display of a "non-textual image" is not supported by the application as originally filed. To support its assertion, the Office Action states as follows:

> The closest description for this limitation is provided in Applicant's specification paragraph 12. Paragraph 12 discloses that the game may be an animated graphical game which may be displayed on a user's cell phone. However an animated graphical game does not exclude textual images from

being displayed. For example, an animated game may comprise texts that are animated.

[Office Action at 3.]

However, the display of a non-textual image, as recited in the claims, is fully supported by the application as originally filed. For example, claim 21 of the Specification discusses an example embodiment of the present invention which clearly supports the claim language. That paragraph describes a simulated scratch-off lottery game which displays "a card [which] has a number of concealed game results," and in which "players learn the game's outcome by uncovering the concealed predetermined lottery game results." The example clearly provides support for the rejected claim language. Display of a "card" including "concealed game results," simply cannot be construed as anything other than a non-textual image. It is, therefore, respectfully submitted that the rejected claim language is fully supported by the application as originally filed. Withdrawal of the rejection is respectfully requested.

IV.   Rejection of Claims 1, 7, 28, and 54 Under 35 U.S.C. § 103(a)

Claims 1, 7, 28, and 54 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over UK Patent Application Publication No. GB 2385802 ("Akalley") and UK Patent Application Publication No. GB 2384330 ("Rayne"). Applicant traverses the rejection for at least the reasons presented below.

As an introduction, some example embodiments of the present invention provide for SMS text messaging support for mobile lottery game systems, where a user may purchase, via a cellular telephone or any remote terminal of a wireless network, an electronic lottery ticket for a future drawing or other lottery games, such as instant win games, e.g., simulated scratch-off games, highly graphical user interactive games, and other kinds of lottery games. Notably, this allow users to play graphical lottery games on a remote terminal, such as a cell phone. For example, in example embodiments, a user may input a lottery game request, using a mobile device, identifying a particular game that the player desires. Players may play lottery games in the form of interactive games that give the players the illusion that they are playing games of skill. Alternatively, players may be able to play scratch-off lottery games, wherein a card has a number of concealed game results and is simulated on a display.

Independent claim 1, as amended, recites:

A remote access based gaming system, comprising:
    a wireless network;

a first remote user terminal;

a data center that includes an application server,

the first remote user terminal configured to transmit toward the application server a first gaming <u>Short Message Service (SMS)</u> text message, the application server configured to transmit toward the first remote user terminal a second gaming SMS text message, wherein the first and second gaming SMS text messages are transmitted via the wireless network; and

<u>the first remote user terminal including</u> a translator configured to convert a first gaming message from a Java transaction object format to the first SMS text message prior to the first SMS text message's transmission via the wireless network, the translator further configured to convert the second gaming SMS text message to a Java transaction object format after receipt of the second gaming SMS text message at the first remote user terminal.

Applicant has amended claim 1 to improve clarity, incorporating language expressly indicating the translator is at the remote user terminal. This is not intended to change the scope of the claim, as it was already implicit in the other language of the claim that the conversion was done prior to sending the SMS message from the remote terminal. Hence, this feature was already present. However, Applicant believe the Office may have overlooked this feature of Applicant's claim 1, and therefore Applicant has amended the feature into the claim expressly.

Neither Akalley nor Rayne teach or suggest a remote user terminal which includes a "translator configured to convert a first gaming message from a Java transaction object format to the first SMS text message prior to the first SMS text message's transmission via the wireless network." As discussed previously, Akalley's only user interface is direct user entry of SMS text messages. Similarly, Rayne describe systems in which users enter simple text messages <u>directly</u> into their client devices and send those messages manually. While Rayne may generally describe protocol conversion, the only such conversion done in Rayne is at the system receiving the message, **not** at the sender's machine. In Rayne, users only send simple SMS messages which are converted at the server. There is no teaching or suggestion of providing any sort of interface in front of SMS to give the user graphical, animated, or other interactive capability at the remote terminal. In contrast, claim 1 provides a translator in a remote user terminal that is configured to convert a first gaming message into SMS format prior to transmission.

By providing such a feature, example systems according to claim 1 may provide users with graphical, and otherwise enhanced, interfaces beyond the capabilities of ordinary SMS text messaging, while still facilitating game play communications using SMS. The cited references, alone or in combination, do not teach **the first remote user terminal including a**

translator configured to convert a first gaming message from a Java transaction object format to the first SMS text message prior to the first SMS text message's transmission via the wireless network. <u>Since the cited references do not teach all the features of claim 1, claim 1 is not obvious, and the rejection should be withdrawn.</u>

Claim 7 depends from claim 1, and therefore should be allowable for at least the same reason as its parent claim. Claim 28, was amended in a manner similar to claim 1, and recites a similar feature in method form. Accordingly, it is respectfully submitted that the references do not teach or suggest each of the elements of claim 28, for at least similar reasons.

Independent claim 54 recites in part:

A remote access based gaming system, comprising:

...
        a translator at the first cellular telephone configured to convert a data between a Java transaction object format and a <u>Short Message Service (SMS)</u> text message format,

.

Claim 54 has been amended similarly to claim 1, and should be allowable for at least reasons similar to claim 1.

Separately and independently, it is respectfully submitted that the cited references fail to teach or suggest at least one other feature of claim 54. For example, the references do not teach or suggest

a database configured to store a first account record for the first cellular telephone and a second account record for the second cellular telephone, **to debit a first portion of a first amount from the first account record when the application server transmits the first lottery game, to debit a second portion of the first amount from the second account record when the application server transmits the first lottery game,** to debit a first portion of a second amount from the first account record when the application server transmits the second lottery game, to debit a second portion of a second amount from the second account record when the application server transmits the second lottery game, **to credit a first portion of a third amount to the first account record when the first lottery game is played and is a winning lottery game, to credit a second portion of a third amount to the second account record when the first lottery game is played and is a winning lottery game,** to credit a first portion of a fourth amount to the first account record when the second lottery game is played and is a winning lottery game, to credit a second portion of the fourth amount to the second account record when the second lottery game is played and is a winning lottery game, to compute and record a first balance in the first account record in accordance with the first portions of the first, second, third, and fourth amounts, and to compute and record a second balance in the second account record in

accordance with the second portions of the first, second, third, and fourth amounts . . . .

as recited in the claim. The recited features require two portions of the amount wagered to two different accounts when a first play is made, and to credit winnings to both those accounts based on how the wager was divided. This provides a system which facilitates the collaborative play of a single lottery game by multiple players each having their own cellular phone interface to the game. The claimed system allows multiple parties to "split" a lottery entry and to receiving winnings reflecting that division. Thus the claim states, e.g., that the database is configured "to debit a first portion of a first amount from the first account record when the application server transmits the first lottery game [and] to debit a second portion of the first amount from the second account record when the application server transmits the first lottery game." None of the cited references provide for such a feature. For instance, Akalley provides only for a system in which an individual player may purchase a play in a game. Akalley makes no reference to a system which facilitates collaborative play between multiple users. In addition, as Rayne does not discuss lottery game play at all, it also does not teach or suggest such a feature. Accordingly, it is respectfully submitted that the cited references do not teach or suggest each of the features of claim 54 for at least the reasons presented above.

It is respectfully submitted that the pending claims are patentable over the proposed combination of Akalley and Rayne. Therefore, withdrawal of the rejection is respectfully requested.

V. Rejection of Claims 2-6, 8-10, 12-27, 29-37, 39-53, and 55 Under 35 U.S.C. § 103(a)

Claims 2-6, 8-10, 12-27, 29-37, 39-53, and 55 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over UK Patent Application Publication No. GB 2385802 ("Akalley"), in view of U.S. Patent Publication No. 2002/0046249 ("Shiigi"). Applicant traverses the rejection for at least the reasons presented below.

Independent claim 2 recites:

A remote access based gaming system, comprising:
a wireless network;
 a first remote user terminal; and
 a data center that includes an application server,
 the first remote user terminal configured to transmit toward the application server a first gaming Short Message Service (SMS) text message,
the application server configured to transmit toward the first remote user

terminal a second gaming SMS text message, wherein the first and second gaming SMS text messages are transmitted via the wireless network

and **wherein the first and second gaming SMS text messages relate to an enriched graphics lottery game played on the first remote user terminal, the lottery game including a non-textual image displayed on the first remote user terminal**.

The cited references do not teach or suggest "first and second gaming SMS text messages [which] relate to an enriched graphics lottery game, the lottery game including a non-textual image displayed on the first remote user terminal." First, the Office Action admits that Akalley does not teach or suggest such an element, Office Action at 6, asserting, however, that the system of Shiigi may be combined with Akalley to teach the missing element. However, neither Akalley nor Shiigi discusses an enriched graphics lottery game which involves the display of a non-textual image at a remote client as part of a lottery game. Although Akalley may arguably describe a lottery game, the game described is a text-based, number-drawing game. There are no graphical elements associated with any game described in Akalley. In addition, Shiigi does not discuss lottery games at all. Rather Shigii only describes receiving handwritten messages and transmitting them to a server. There is no discussion of any sort that would lead an ordinary artisan to providing a graphical game interface in front of an SMS communication protocol.

The **only** reference to SMS messages found in Shiigi at all is in cited paragraph 98:

> [0098] The wireless real time server version may also be implemented on portable PDA devices and mobile phones that use the Short Messaging Service (SMS) or Enhanced Messaging Service (EMS) for wireless instant messaging on wireless phone service. SMS and EMS now permit graphics attachments to be sent with messages. The handwriting client software can be implemented to run on these mobile devices using a micro or personal Java platform that are becoming available on these devices. The real-time server can correspondingly be adapted with an interface to support handwriting messages sent through the messaging formats used by these mobile messaging devices.

In fact, the system described elsewhere in Shiigi uses **bitmaps or GIFs** to send the graphical images. Even in Shiigi paragraph 98 there is no teaching or suggestion that the **text** payloads of SMS text messages would be used to communicate information to or from a graphical user interface on a remote terminal. Accordingly, it is respectfully submitted that the references do not teach or suggest each of the elements of claim 2.

Further, even if the systems described in Akalley and Shiigi arguably taught all of the elements of claim 2, the Office Action has still failed has not presented any valid reason as to why the systems might be combined. As the MPEP explains:

> The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

[MPEP § 2142.]

First, the Office Action asserts that "it would have been obvious to one of ordinary skilled in the art at the time the invention was made to modify Akalley's method of playing a lottery game, and incorporate Shiigi's method of incorporate graphics to SMS messages in order to display the game outcome in an exciting non-textual image." Office Action at 7. This reasoning, however, is simple contrary to common sense. Neither Shiigi nor Akalley teach or suggest to an ordinary artisan that Akalley's simple text game should have "the game outcome [displayed] in an exciting non textual manner". The purpose of graphics in Shiigi is for handwriting recognition and human input of drawings, not to provide exciting non-textual images. The lottery game discussed in Akalley does not have any elements which may be displayed as non-textual images. The game consists purely of a set of numbers which are matched to a set of drawn numbers. The only elements of Akalley's game are text, therefore, the only suggestion that they should be provided "in an exciting non-textual image" comes from Applicant's own disclosure.

Second, even if the Office Action's reasoning were correct, which is not agreed with, it would not lead an ordinary artisan to the invention of claim 2. Claim 2 recites that the translator is provided in front of the SMS message sent by the remote terminal, not that the game result is converted into an exciting format. (Granted the conversion of the result feature is recited in dependent claims.) There is no teaching or suggestion of why an enriched graphic would be combined with a system to receive user inputs and convert them to SMS.

Therefore, it is respectfully submitted that claim 2 is patentable over Akalley and Shiigi for at least the reasons presented above, as are claims 3-6, 8-10, 12-27 which depend from it. In addition, independent claims 29 and 55 contain claim elements similar to those

discussed above, and it is respectfully submitted that those claims are also patentable over the cited references for at least reasons similar to those presented, as are claims 30-37 and 39-53, which depend from claim 29.

Further, dependent claims 17-19 are also patentable independent of and in addition to the reasons presented above as to their independent parent claim. These claims recite that "the follow-up win-loss notice is in the form of a notice of a result of the drawing" and that "the **first remote terminal [is] configured to compare** the result with a user lottery number, and to determine one of a win and a loss based on the comparison." Neither of the references teach or suggest such a feature. Rather, any user device which may be described in either reference is not configured to make any kind of a comparison. Notably, in the system of Akalley, the device is simply a dumb device designed to transmit a request and receive information to display. No comparison is made on the remote terminal device, which does not dynamically interact with the lottery game information at all, but functions simply as a text messaging device. Accordingly, these dependent claims are patentable for at least the additional reasons presented above.

In addition to the reasons presented above, Applicant notes that the additional features recited in dependent claims 26-27 and 52-53 are not taught or suggested by the references. Specifically, the cited references do not teach or suggest either an instant win lottery game or a simulated scratch-off lottery game. Neither reference makes any mention at all of instant win lottery games or simulated scratch-off lottery games. As an initial matter it is noted that the term "instant win" lottery game is well-defined in the art and specifically refers to lottery games which are not "future draw" lottery games. Akalley references only a single future draw lottery game, and Shiigi makes no reference to lottery games at all. Further neither reference makes any mention at all of scratch-off games, and clearly the references do not teach or describe "simulated" scratch-off lottery games.

Additionally, dependent claims 10, 22-24, 37, and 49-51 are also patentable independent of and in addition to the reasons presented above as to their independent parent claims. The claims recite features which provide for the collaborative play of games. As explained above in connection with claim 54, Akalley and Rayne do not teach or suggest such features. In addition, Shiigi does not discuss the play of games at all and, therefore, also does not discuss the collaborative play of games. Accordingly, these claims are patentable for at least the additional reasons presented above.

It is respectfully submitted that for at least the reasons presented above, the pending claims are patentable over the cited references. Therefore, withdrawal of the rejection is respectfully requested.

VI.   Rejection of Claims 11 and 38 Under 35 U.S.C. § 103(a)

Claims 11 and 38 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over UK Patent Application Publication No. GB 2385802 ("Akalley"), in view of U.S. Patent Publication No. 2004/0162142 ("Cousineu"). Applicant traverses the rejection for at least the reasons presented below.

Claim 11 depends from claim 2 and claim 38 depends from claim 29. As explained above, claims 2 and 29 are patentable over Akalley, even in combination with Shiigi. The Office Action does not suggest that Cousineu addresses the deficiencies of Akalley as to the independent claims, and it is respectfully submitted that it does not do so. Accordingly, claims 11 and 38 are patentable for at least the reasons presented above in connection with the patentability of claims 2 and 29. Withdrawal of the rejection is respectfully requested.

VII.   New Claims 57 -59

Claims 57 -59 are added. The claims are fully supported by the application as originally filed. No new matter has been added. Claims 57-59 depend from claims 2, 5, and 29 respectively and are, therefore, patentable over the cited references for the reasons presented as to their independent claims. In addition, claims 57-59 recite an "animated graphical game." The cited references do not teach or suggest an animated game and, therefore, the claims are also patentable for at least that additional reason. Accordingly, it is respectfully submitted that the new claims are patentable over the cited references for at least this additional reason.

VIII.   Facts Considered "Common Knowledge or Well-Known in the Art

In addition, Applicant specifically traverses all suggestions, unsupported by references, that elements of the present claims may be found in the prior art or would be obvious to one skilled in the art. Specifically, Applicant traverses the contentions on pages 5-6 of the Office Action that the use of servers and translation of message formats, as recited in the claims, are well-known. Neither the specific translations recited in the claims nor the use of servers recited in the claims is well-known.

Applicant traverses the above mentioned statements as well as any other statements found in the Office Action which may be understood to suggest that an element of any of the pending claims is well-known in the art, implied by the cited references, or would otherwise be obvious to an ordinary artisan, without providing a reference specifically supporting that proposition. Further, to the extent that the Office Action argues that any feature of Applicant's claims are "well known" without referring to a specific feature of a cited reference, to preserve Applicant's rights on appeal, Applicant respectfully traverses, and requests either a specific citation to a reference or an affidavit. *See* 37 C.F.R. §1.104(d)(2).

IX. CONCLUSION

In light of the foregoing, it is respectfully submitted that all of the presently pending claims are in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited. While no additional fee is considered to be due, the Office is hereby authorized to charge any additional fees, which may arise out of the filing of this paper, or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to the deposit account of **K&L Gates LLP,** Deposit Account No. **080570**.

The Examiner is invited to contact the undersigned at the telephone number below to discuss any matter concerning this application.

Respectfully submitted,
K&L Gates LLP

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